

1 A Statement of Principles

Historians and archaeologists often help contemporary society remember its ancestors by studying materials and objects that were never intended by their makers to be memorials. Given this, the protection of old cemeteries and graveyards is particularly important because it is a way of honoring our forebears by respecting the things they made specifically for us to remember them by.

A second guiding principle allows us to extend our concern beyond extant cemeteries from the historic period to encompass all buried human remains. That principle, supported by the weight of judicial opinion throughout the U.S., is the idea that once a place has been used for human burial, it remains a special place in perpetuity, regardless of subsequent land transfers. In sections 3 and 4 of this pamphlet we spell out specific procedures for dealing with both marked and unmarked human burials and burial places encountered during the course of ground-disturbing activities.

The goal of the DHR in formulating and publicizing these procedures is simply to ensure that there is someone to speak for every burial place in New Hampshire, public and private, historic and prehistoric. Citizens with rights to private burial grounds and descendants of those interred in them can speak for some private burial grounds, and local governments can speak for public cemeteries within their jurisdiction. The role of the DHR is nothing more than to speak for private cemeteries and Native American Indian burial places which have no other advocates. In these cases our purpose is to extend to these memorials and remains the same kind of respect that any of us would want for the remains of our own ancestors.

3 Marked Burials

If you plan a landscape alteration, you should try to locate any old burial grounds in the area you intend to alter. There are many sources of this kind of information, including USGS quadrangle maps, town histories, and two organizations: The New Hampshire Historical Society and the New Hampshire Old Graveyard Association. In addition, under a recently-enacted New Hampshire statute, towns are obligated to keep information on old gravesites. This list of sources is not exhaustive, but it is a good start.

If there are marked burials in the path of your proposed construction, the DHR would prefer that they be left undisturbed, and state law requires a 25-foot buffer zone around most cemeteries. However, marked burials may be removed legally, and this requires two sets of approvals.

First, you need to determine who holds rights to the cemetery. Rights to visit, maintain, and approve alterations to a private cemetery belong to those who established the cemetery — and to their descendants — regardless of subsequent transfers of the surrounding property. The written permission of the holders of these rights is required to move a private cemetery. If those who hold these rights are impossible to locate, then written permission is required from the local government, which will consult with the DHR.

Second, the removal of burials to another location requires a permit. Typically, a funeral director applies to the NH Department of Health and Human Services for this permit, which must be countersigned by the local health officer. The DHR has the authority to review these applications and advise the Department of Health and Human Services.

4 Unmarked Burials

In the event that land-disturbing activities uncover unmarked human remains, a second set of procedures applies.

First, excavation must be discontinued and the local police notified. The police will call in the county medical examiner who will make an investigation to determine whether the remains require a criminal investigation or an archaeological investigation.

In the latter case, the county medical examiner will notify the State Archaeologist who has, in most cases, 48 hours to arrange with the landowner for the protection or removal of the remains. The State Archaeologist oversees the removal and analysis of the remains and has the responsibility of attempting to consult with individuals who may have an interest in them, next of kin and/or appropriate Native American groups. If located, next of kin or Native American groups will have the right to determine what happens to the remains after they have been analyzed.

Finally, there are provisions for determining who will bear the costs of archaeological work necessitated by the discovery of unmarked burials. In the case of privately funded, non-commercial land-altering activities, the DHR will fund the work. For privately funded commercial land alteration, the land owner will bear the cost of archaeology. And in the case of state funded land alteration, the department funding the construction will also fund the archaeology.